

RIDDELL, J.:—On the 20th March, 1912, a proposition was made to the city council of Stratford that the city corporation should buy the property, land, buildings, and machinery of the McD. Thresher Company, for \$2,000, and convey to that company a parcel of land in the city. The proposition was referred to a special committee, and the council met on the 25th March to consider the report of the committee. The committee submitted an agreement that the city corporation should convey to the company the said land, in payment for which the company would convey to the city corporation the equity of redemption (subject to a mortgage for \$20,000) of the lands of the company, and also the factory premises and plant. The council passed a resolution at the meeting adopting the agreement.

An alderman of the city informed the plaintiff, a ratepayer of Stratford, that it was not the intention of the council to submit the agreement to the people or to pass any by-law, but that it was the intention to buy the land for transfer to the company at once and carry out the agreement forthwith. Thereupon the plaintiff applied to the Local Judge at Stratford and obtained an injunction, served notice of motion to continue the injunction, took out an appointment to examine, etc.

Pending the motion, the city solicitor wrote the plaintiff's solicitor that the McD. company had declined further to proceed with the matter of the agreement—that the agreement had not been executed and would not be executed. "We assume, therefore, that you will not find it necessary to proceed further with your injunction proceedings." The plaintiff's solicitor then replied, saying, amongst other things, "Our client must be assured of his costs if you wish him to drop this at the present juncture"—whereupon the city solicitor said: "When there is nothing left to litigate about except costs, it is improper to proceed with the action. The question of costs can be determined, if not agreed upon, in Chambers."

The plaintiff moved for his costs before the Local Master at Stratford, who did not allow costs to either party. He gave leave to appeal; and the plaintiff now appeals.

The defendants file an affidavit upon the motion setting out that no action was taken by the council except the passing of a resolution adopting the agreement—but there is no denial of the intention to proceed forthwith with the illegal arrangement, although it must have been the allegation of such intention which influenced the Local Judge in granting the injunction order, and although the plaintiff's affidavit sets this up as the reason for moving. It must be taken, then, that such was the intention.